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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JONATHAN LOWTHERT, OLEG B. RASHKOVSKIY,
and ANDRAY SILETSKY

Appeal 2010-005108
Application 09/765,246
Technology Center 2400

Before ROBERT E. NAPPI, KALYAN K. DESHPANDE, and
RAMA G. ELLURU, *Administrative Patent Judges*.

ELLURU, *Administrative Patent Judge*.

DECISION ON APPEAL

I. STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1-28 and 30-34. (App. Br. 5). We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

Appellants' Invention

Appellants' inventions "relates generally to content distribution." (Spec., page 1).

Illustrative Claim

1. A method comprising:

allowing the use of content on a content receiver;

collecting information about web sites visited by a user of said receiver;

said receiver receiving, from a remote processor-based system, a first subset listing of advertising resources;

automatically and selectively choosing, on said receiver and without user intervention, an advertising resource from the first subset listing based at least in part on said web sites visited by the user, to compile a second subset listing of advertising resources; and

capturing an advertisement listed on the second subset listing of advertising resources to store the advertisement on said content receiver.

Prior Art Relied Upon

Picco	US 6,029,045	Feb. 22, 2000
Eldering	US 6,324,519 B1	Nov. 27, 2001
Thomas '068	US 2003/0037068 A1	Feb. 20, 2003
Sahai	US 6,594,699 B1	Jul. 15, 2003

Thomas '964 US 2005/0149964 A1 Jul. 7, 2005

Rejections on Appeal

1. Claims 1, 2, and 7-10 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Picco in view of Eldering. (Ans. 3-7).

2. Claims 3-6 and 33 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Picco in view of Eldering and Thomas '964. (Ans. 7-8).

3. Claims 11-20 and 34 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Picco in view of Eldering and Thomas '068. (Ans. 9-14).

4. Claims 21-28 and 30-32 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Picco in view of Thomas '068 and Sahai. (Ans. 14-18).

Examiner's Findings and Conclusions

1. The Examiner finds that Eldering clearly discloses the step of "collecting information about web sites visited by a user of the receiver," as it specifically teaches "[i]n a preferred embodiment, the channels or **web sites viewed by a subscriber are monitored**, and heuristic rules are applied to the sites **to better determine** the **demographic and product preference characteristics of the subscriber**." (Ans. 19 (citing Eldering 4:42-44, 55-56, 62-65)). The Examiner further finds that it would have been obvious to incorporate Eldering's teachings into Picco to monitor a user's web-surfing habits enabling better characterization of the user's characteristics and aiding in better targeting of advertisements. (Ans. 19).

2. The Examiner concludes that Appellants' arguments pertaining to cookies are moot in view of Eldering's teachings. (Ans. 19).

3. The Examiner finds that, with respect to claim 21, Sahai teaches a storage (server) to determine information about a characteristic of the receiver (client) hardware so that media can be transmitted to the client in accordance with the client capabilities. (Ans. 19-20 (citing Sahai 2:23-28, 3:23-60, 6:17-21)). The Examiner, thus, concludes that one of ordinary skill in the art, at the time of the invention, would have found it obvious to further monitor the hardware capabilities of a receiver so that data can be transmitted to a receiver based on a receiver's capabilities. (Ans. 20). The Examiner further explains that the modified system would minimize scenarios where a service provider provides advertising or other programming to a user whose device is incompatible of rendering such programming due to hardware limitations. (Ans. 20).

Appellants' Contentions

Appellants contend that:

1. With respect to claims 1, 2, and 7-10, getting information about the web sites that are actually visited would be more useful in determining which advertisements to play than would be information about what applications the user uses, and that if the claimed invention was so obvious, it would be hard to understand why Thomas was collecting information about the applications the user was using, instead of the web sites. (App. Br. 11).

2. With respect to claims 1, 2, and 7-10, cookies are not used to determine which web sites a user visited and they are not used to select which advertisements to play. (*Id.*)

3. With respect to claim 21, no reference teaches using a receiver hardware characteristic to automatically and selectively choose the resources from the first subset listing. (App. Br. 12; Reply Br. 1). Appellants specifically argue that it is a different concept to use the receiver's capabilities to determine how to transfer data to the receiver, as taught by Sahai, as opposed to using the receiver's characteristics to choose a subset of advertising resources that will be stored, as required by the claim. (Reply Br. 1).

II. ISSUES

1. Did the Examiner err in concluding that the combination of Picco and Eldering renders claims 1, 2, and 7-10 unpatentable? This issue turns on whether the Examiner has provided support for finding that Eldering teaches or suggests the claim limitation "collecting information about web sites visited by a user of said receiver" and whether Appellants' argument regarding cookies is moot in light of the teachings of Eldering.

2. Did the Examiner err in concluding that the combination of Picco, Thomas '068, and Sahai renders claims 21-28 and 30-32 unpatentable? The issue turns on whether the prior art teaches or suggests determining information about the receiver's hardware characteristics and using that information to select advertisements.

III. ANALYSIS

We have reviewed the Examiner's rejection in light of Appellants' contention that the Examiner has erred. We disagree with Appellants' conclusions. We highlight and address specific arguments for emphasis as follows.

Claims 1, 2, and 7-10: 35 U.S.C. § 103(a) Rejection—Combination of Picco and Eldering

As the Examiner explains (Ans. 18-19), claims 1, 2, and 7-10 are rejected over Picco in view of Eldering, and *not* in view of Thomas, which is the basis of Appellants' arguments. We further agree with the Examiner that Eldering teaches or suggests the disputed claims limitation (*see* Eldering 4:42-44, 55-56, 62-65), and further, that the issue of whether the use of cookies supports the limitations is moot in view of Eldering's teachings which are relied upon to reject claims 1, 2, and 7-10. Eldering specifically teaches monitoring websites viewed by a subscriber to better understand the subscriber's demographic and product preference characteristics. (Eldering 4:42-46). This teaching satisfies the claim limitation "collecting information about web sites visited by a user of said receiver." Further, as the Examiner explains, it would have been obvious to incorporate Eldering's teaching into the Picco system to better target advertisements. (Ans. 19). Thus, the combination of these references teaches the claim limitation "automatically and selectively choosing … advertising resource … based at least in part on said web sites visited by the user." Therefore, we agree with the Examiner's conclusion that the combination of Picco and Eldering discloses the disputed claim limitation of claims 1, 2, and 7-10.

Claims 3-6 and 33: 35 U.S.C. § 103(a) Rejection—Combination of Picco, Eldering, and Thomas '964

Appellants repeat the same arguments with respect to claims 3-6 and 33, as claim 1. (App. Br. 12). For the same reasons discussed above with respect to claim 1, we agree with the Examiner's conclusion that the combination of Picco, Eldering, and Thomas '964 discloses all the disputed limitations of claims 3-6 and 33.

Claims 11-20 and 34: 35 U.S.C. § 103(a) Rejection—Combination of Picco, Eldering, and Thomas'068

Appellants make the same arguments with respect to claims 11-20 and 34, as claim 1. (App. Br. 12). For the same reasons discussed above with respect to claim 1, we agree with the Examiner's conclusion that the combination of Picco, Eldering, and Thomas '068 discloses all the disputed limitations of claims 11-20 and 34.

Claims 21-28 and 30-32: 35 U.S.C. § 103(a) Rejection—Combination of Picco, Thomas '068, and Sahai

The present application does not support the distinction Appellants argue with respect to claim 21. Appellants argue that Sahai discloses "us[ing] the capabilities of the receiver to determine how to transfer data to the receiver" and not "using the characteristics of the receiver to choose a subset of advertising resources" as required by the claims. (Reply Br. 1). The Specification discloses using information regarding a receiver hardware characteristic to determine which advertisements database is adaptable to a particular receiver characteristic, and thus, receivable by the receiver. (Spec., pages 15-16 ("Some databases [of advertisements] may include

advertisements that are suitable for display on particular types of receivers such as radio-equipped receivers, television-equipped receivers, and desktop or laptop computers as opposed to handheld computers ….")). This is consistent with Sahai's disclosure, which teaches storage (server) to determine information about characteristics of the receiver (client) hardware so that the correct data format can be delivered to the client in accordance with the client characteristics. (Ans. 20 (citing Sahai 2:23-28, 3:23-60, 6:17-21 "Client hardware type as TV set top, PC, lap tp, etc.")). Therefore, we agree with the Examiner's conclusion that the combination of Picco, Thomas '068, and Sahai discloses the disputed claim limitation of claims 21-28 and 30-32.

IV. CONCLUSION

The Examiner has not erred in rejecting claims 1, 2, 7-10, 21-28, and 30-32 as being unpatentable under 35 U.S.C. § 103(a) for the reasons discussed above, and claims 3-6, 11-20, 33, and 34, which were not separately argued (App. Br. 12), are unpatentable for the same reasons.

Claims 1-28 and 30-34 are unpatentable.

V. DECISION

We affirm the Examiner's decision to reject claims 1-28 and 30-34.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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